

REMARKS/ARGUMENTS

Specification Objection

The present specification was objected to for failing to provide a brief description of the Figure 26. The applicant agrees and added a brief description as requested by the examiner. No new matter has been added by virtue of the amendment.

Claim Objections

Claim 10 was objected to for inadvertent loss of lines of text. The applicant agrees and the complete text of claim 10 is present in the claims submitted herewith.

Claims 12 and 13 were objected to for using the abbreviated term "HMI". The applicant agrees and replace the objected term with "human machine interface" as suggested by the Office.

35 USC § 102

Claim 1 was rejected under 35 USC § 102(b) as being anticipated by Miller (U.S. Pat. No. 5,079,731). The applicant agrees in some respects and disagrees in others. Nevertheless, claim 1 was amended to include all of the elements of claim 2, which was deemed allowable in the present office action. Therefore, amended claim 1 should be deemed allowable. Claim 2 was canceled to avoid claim duplication and claims 3 and 4 were amended to correct dependencies.

35 USC § 103

Claims 6-9 were rejected under 35 USC § 103 as being obvious over Miller et al. (U.S. Pat. No. 5,079,731 in view of Kobayashi et al. (JP 09330118). The applicant respectfully disagrees for various reasons.

Among other things, the Examiner asserts that Kobayashi teaches monitoring the internal state of control equipment. While that statement is certainly true, it should not be ignored that the *process of monitoring as taught by Kobayashi is executed using a dedicated internal state monitor, which is entirely inconsistent with use of a simulator*, let alone a simulator that is coupled to three points to a control equipment. Indeed, Kobayashi *teaches still further away* from the claimed subject matter by *using the internal state monitor to gather data directly from*

the plant devices, rather than to obtain these data from the control equipment. Therefore, Kobayashi fails to remedy the defects in Miller.

"...Deficiencies of the cited references cannot be remedied by...general conclusions about what is 'basic knowledge' or 'common sense...' The findings must extend to all material facts and must be documented on the record, lest the "haze of so-called expertise" acquire insulation from accountability. "...Common knowledge and common sense,..." even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority (in re: Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697).

As claims 7-9 depend on amended claim 6, and claim 6 is not obvious over Miller in view of Kobayashi as pointed out above, claims 7-9 are also non obvious.

Claims 10-11 were rejected under 35 USC § 103 as being obvious over Miller et al. (U.S. Pat. No. 5,079,731 in view of Hinds et al and further view of Kawahara. The applicant once more respectfully disagrees for various reasons. With respect to claims 10-11, it is pointed out that the "...software for entering and maintaining one or more databases...[must include]... validation requirements and associated test procedures, each test procedure comprising one or more tests, each test comprising at least one signal to be generated by the simulator and transmitted to the control system being tested..."

It is well established that the factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with (e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.")).

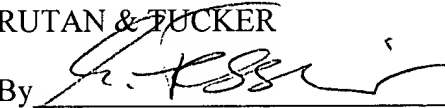
None of the cited references teaches or suggests that the databases includes *validation requirements and associated test procedures*. Furthermore, the references fail to teach or suggest that the signals are generated by the simulator and *transmitted to the control system as part of the associated test procedure*. It is specifically pointed out that not only validation requirements and test procedures must be present, but that these elements must be associated with each other. As such specific combination is not taught or suggested, the cited references also fail to teach or suggest a signal that is associated with these test procedures.

In view of the present amendments and arguments, the applicant believes that all claims are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

RUTAN & TUCKER

By



Martin Fessenmaier, Ph.D.
Reg. No. 46,697
Tel.: (714) 641-5100